

- (1) Whether claimant suffered accidental injury arising out of and in the course of claimant's employment with the respondent.
- (2) Whether respondent was provided statutory notice pursuant to K.S.A. 44-520.

- (3) Claimant's entitlement to temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-534a, as amended by S.B. 649 (1996), gives the Administrative Law Judge the power to award or deny temporary total disability compensation. As K.S.A. 44-534a, as amended by S.B. 649 (1996), and K.S.A. 44-551, as amended by S.B. 649 (1996), significantly restrict the right of a party to appeal from a preliminary hearing to the Appeals Board and as claimant's entitlement to temporary total disability compensation is not one of the issues listed as reviewable upon appeal, the Appeals Board will not address the issue of claimant's entitlement to temporary total disability compensation. Respondent's appeal on this issue is dismissed.

The Appeals Board will address the issue of whether claimant suffered accidental injury arising out of and in the course of her employment. Claimant's testimony is somewhat contradictory in that she was asked, during the preliminary hearing, whether she noticed a correlation between the symptoms in her arms and the work she was performing. She answered in the negative. She then proceeded to describe how her work duties aggravated her symptoms, causing her significant pain. Claimant does describe how her work activities caused first her right hand and then her left hand to become symptomatic and how the symptomatology continued to worsen during her employment from November 1995 through January 27, 1996, her last date of employment before surgery.

The Administrative Law Judge found that claimant had suffered accidental injury arising out of and in the course of her employment and, further, found that claimant had provided notice to respondent of this accidental injury citing Berry in support of both findings. The Administrative Law Judge found claimant suffered accidental injury through a series of microtraumas through her last day worked on January 27, 1996. As respondent was notified by Dr. Melhorn's office that claimant was requesting surgery for her upper extremity symptomatology and that the need for surgery stemmed from her employment with respondent, it appears the Administrative Law Judge based his decision upon the "bright line" rule of Berry. The Appeals Board finds support for this decision in the record. Claimant's description of her increased symptomatology is credible and supports a finding that claimant suffered accidental injury arising out of and in the course of her employment.

There is contradictory testimony from Kim Brown, one of claimant's supervisors for the respondent, regarding notice of claimant's injuries. Ms. Brown testified she did not learn of claimant's ongoing symptomatology until approximately January 22, 1996, when respondent was first contacted by Dr. Melhorn requesting authorization to provide medical treatment for claimant's upper extremity symptomatology. The Appeals Board finds the evidence supports claimant suffered accidental injury arising out of and in the course of her employment with an injury date through January 27, 1996, her last date of employment before surgery. Therefore, the Appeals Board finds claimant provided notice to respondent on January 22 for a series of accidents through January 27, 1996. The requirements of K.S.A. 44-520 have been satisfied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated April 9, 1996 should be, and is hereby, affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: Brian Pistotnik, Wichita, KS
P. Kelly Donley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director